

**COPY**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

**RECEIVED**  
JUN 26 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

UNION PACIFIC RAILROAD COMPANY	)	
	)	
Petitioner,	)	
	)	
vs.	)	T01-0040
	)	
TOWNSHIP OF GENEVA, STATE OF	)	
ILLINOIS, and ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondents.	)	

Petition for an order of the Illinois Commerce Commission  
For the closure of Old Kirk Road, public grade Crossing  
DOT #174 986H at milepost 33.75 on the Geneva  
Subdivision, City of Geneva, Geneva Township, Kane  
County, Illinois.

BRIEF OF PETITIONER UNION PACIFIC RAILROAD COMPANY ("UP")

In accordance with the Order of Judge June Tate entered on May 14, 2003, at the close of the hearing, UP respectfully submits the following as its Brief to provide further additions to the record and to summarize arguments regarding the subject petition.

In accordance with § 1536.20 Criteria for Crossing Closure, of the Illinois Administrative Code at subsection (j), the Illinois Commerce Commission (the "Commission") shall order a crossing closed if it meets the criteria set forth in subsections (e), (f), (g) and (i) § 1536.20 or if under the provisions of § 18c-7401 of the Illinois Commercial Transportation Law (625 ILCS 5/18c/7401)(ICTL), the Commission finds based on the totality of evidence presented, that public safety requires the crossing be closed and that public convenience served by the crossing in question is not such as to justify its further retention. Moreover, the Commission shall when such action is supported by the evidence, order the construction of a turn-around or culdesac to accommodate school bus traffic and/or highway maintenance equipment affected by the crossing closure. See, IAC § 1536.20(k). In addition, the Commission shall allocate the cost of any improvements found necessary to accommodate a crossing closure required by IAC § 1536.20 among the railroad, the Illinois Department of Transportation, and the Grade Crossing Protection Fund. The Commission may also allocate costs to the highway agency with evidence that the record supports such allocation.

**DOCKETED**

From the outset of this matter the UP has indicated that the Average Daily Traffic Volume ("ADT") and the Train Volume and Speed Index ("TVSI") at the Old Kirk Road Crossing (the "Crossing") do not require closure of the Crossing as a matter of law. The Crossing is a fully signalized and gated Crossing, and clearly falls within Category 3 and the ADT is not less than or equal to seventy-five (75) vehicles per day and the TVSI is not greater than or equal to three hundred (300). Therefore, the Commission is not required to close the subject Crossing as a matter of law in accordance with IAC § 1536.20(j). However, the UP is of the firm belief that based on the totality of the evidence presented in this matter before the Commission that public safety requires the closing of the Crossing and that public convenience served by the Crossing in question is not such as to justify its further retention. Closing of the Crossing is within the prerogative of the Commission in accordance with IAC § 1536.20(j). In addition, the UP is of the opinion that the evidence clearly shows that the other criteria for closing the Crossing as set forth in the Illinois Administrative Code have been satisfied. Namely, (i) that the alternative public Crossing is a grade separation, (ii) that the alternative roadway, Route 38/ Roosevelt Road is an all weather surface clearly superior to Old Kirk Road with substantial additional width to accommodate existing vehicular traffic and is already utilized by the same types of vehicular traffic as Old Kirk Road, (iii) that the rerouting under the current configuration of the intersection of Old Kirk Road and Route 38/Roosevelt Road will not have a significant adverse affect on public safety in that the rerouting will not cause or increase an unsafe and incompatible mix of traffic on Route 38/ Roosevelt Road. In point of fact, the tractor-trailer traffic would be better suited for Route 38/Roosevelt Road as opposed to Old Kirk Road, (iv) rerouting will not increase emergency response time in that by its own admission in its answer, Respondent clearly indicates that in Exhibit 13 of its Response, that emergency vehicles and school buses could use Kirk Road entrances to the area over the Old Kirk Road Crossing to avoid the Crossing. The evidence clearly shows that all emergency vehicles are routed over the bridge as opposed to the Crossing, (v) with regard to evidence of record relating to the safe public use of Route 38/Roosevelt Road, the alternative roadway, it is clear that the alternative roadway has been used for both left and right-hand turns by all legal vehicles for at least fifty (50) years; (vi) that there was no evidence whatsoever placed on the record by the Illinois Department of Transportation (IDOT) indicating that IDOT had plans to require a right-in or right-out configuration at the intersection of Route 38 and Old Kirk Road; and (vii) in accordance with IAC § 1536.2(i), it is clear that the Crossing is in an unincorporated area and as such the alternative public Crossing at the Kirk Road bridge is clearly within four (4) miles of the Crossing which is proposed to be closed. There is substantial evidence on the record which supports closure of the Crossing including the following:

1. It is clear from Petitioner's Exhibit 2 that the location of Old Kirk Road relative to the bridge at Kirk Road is literally within a stone's throw of each other. It is also clear that there is substantial support for the closure of the subject Crossing. This support consists of no less than the letter of Laurence Hasvold, Regional Administrator for the Federal Railroad Administration of the U. S. Department of Transportation, to Mr. Robert Berry, Railroad Safety Specialist at the Illinois Commerce Commission dated June 13, 2001, a copy of which is attached hereto as Exhibit "A" and entered into

evidence in this matter. The FRA supports consolidation of and/or closing of redundant and unnecessary highway rail grade crossings and states that the Crossing should be closed.

2. By letter dated March 29, 2003, the DuPage Railroad Safety Council encourages closure of the Crossing. See Exhibit "B" hereto.

3. The Chicago Commuter Grade Crossing Steering Committee by Memorandum dated September 30, 1999 on behalf of both the UP and Metra encourages the closing of the Crossing. See Exhibit "C" hereto.

4. Respondent's Exhibit 3 clearly shows that some of the residents in the area support closure of the Crossing. See Exhibit "D" hereto

5. Resolution Number 03-168 of the Kane County Board supporting the Crossing at Old Kirk Road in Geneva specifically states that the Kane County Board's opposition to the closing of the subject Crossing is only until an alternative access and circulation plan can be developed in accordance with a major intersection improvement at Kirk Road and Route 38/Roosevelt Road. See Exhibit "E" hereto.

6. The resolution of the Forest Preserve District of Kane County is based on the sole fact that the Kane County Events Center, which is home to the Kane County Cougars, attracts an estimated 500,000 attendees annually and that closure of Old Kirk Road would limit access to and from the Kane County Events Center with no concern for the obvious increased safety to the public that would result by requiring use of the Kirk Road bridge as opposed to the Crossing at Old Kirk Road. There is no evidence that the residential roads south of the UP trackage in the vicinity of the Crossing were designed to accommodate thousands of vehicles as is clearly the design standard for Route 38/Roosevelt Road and the Kirk Road overpass. See Exhibit "F" hereto.

7. With regard to the letter of the Fire Chief of the Geneva Fire Department, Respondent's Exhibit 9, there is a clear concern that the water distribution system for fire suppression does not extend south of the tracks along Old Kirk Road. Therefore, in order to fight fires south of the tracks, tanker trucks would take on water north of the railroad tracks and travel over Old Kirk Road or the Kirk Road bridge to fight the fire. If there is a fire south of the UP tracks in the vicinity of Old Kirk Road and water hoses can be placed across the tracks and the trains may be instructed to stop at the location of the hoses whether or not there is a Crossing at Old Kirk Road. However, if the trains cannot be legally stopped, for at least two (2) hours in each direction the Crossing would be blocked by trains running over the Crossing thereby preventing the fire trucks or the hoses from utilizing the Old Kirk Road Crossing. Therefore, the only responsible and reliable alternative would be to use the bridge at Kirk Road literally six hundred (600) feet to the west. In that trains would not block the progress of the tanker trucks at the Kirk Road Bridge, it would appear that the only prudent thing to do would be to utilize the bridge in all fire fighting instances.

8. It is interesting to note that there is no resolution from the Geneva Township Highway Commission or the Geneva Township Board (the governmental authority in charge of Old Kirk Road) regarding the removal of the Crossing.

9. The letter from the Kane County Department of Transportation dated April 21, 2003 (see Respondent Exhibit 13), clearly recommends use of Old Kirk Road for several industrial businesses north of the Crossing that use semi-tractor/trailer trucks to haul materials in and out of their sites. If there is a substantial quantity of this type of traffic as is alleged by Respondents, it would seem unconscionable to intentionally route such heavy traffic through the residential streets of the residential area south of the Crossing as opposed to requiring such traffic to utilize the major arterial road just several hundred feet to the north, Route 38/Roosevelt Road. In addition, to use Old Kirk Road to relieve "peak traffic flows" after major events at the Kane County Events Center where such traffic will in fact be stopped by any trains proceeding through the Crossing could not possibly relieve traffic flow but rather would potentially exacerbate delays and stacking of vehicles at the Crossing.

10. With regard to the letter from Welding Material Sales, (see, Respondent's Exhibit 11), with the attached Petition in opposition to the closing of the Crossing, the UP directs the Commission's attention to 10 ILCS 5/28-3 regarding contents of a petition for the submission of a public question. It is clear that the Petition, as drafted, does not satisfy the statutory requirements. Moreover, and most importantly, those individuals signing the Petition do not appear to be registered voters in the territory which is the subject of the Petition before the Commission. Rather, it appears that only five (5) of the thirty-three (33) signatories may live in Geneva Township and that not one signatory lives in the residential area south of the Crossing. Moreover, there is no indication as to whether or not the signatories are registered voters in the vicinity of the Crossing. Therefore, this Petition with regard to the subject matter before the Commission should be rejected as being legally deficient.

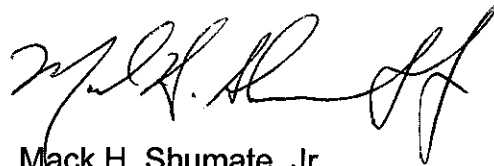
Throughout this proceeding, the first substantive hearing having taken place on September 24, 2001, the UP has diligently pursued in good faith a settlement agreement and release with the Township of Geneva with regard to the Crossing. In response to the UP's initial offer, the Township of Geneva through its attorney on February 20, 2002, prepared and provided a proposed settlement agreement to the UP for removal of the Crossing. After several negotiation sessions and meetings with the Geneva Township Highway Commissioner on site, a revised proposal was prepared by the Geneva Township and forwarded to UP on December 2, 2002. After further negotiations on the phone an agreement in principle as to what work would be done and the amount which would be paid was agreed to in early 2003. The UP was then informed that the Geneva Highway Township Commissioner was then going to take the proposal to the constituents in the area for their information and potential approval. As with all governmental entities, the UP expected to be able to contract with and negotiate with the elected representatives. At no time was it ever indicated to UP that a ratifying election would be required in order for the elected officials to act on behalf of their constituency. In point of fact, the UP knows of no legally binding election or general

consensus that could take effect that would be binding on the elected officials other than a properly crafted referendum. It is for this reason that the UP believes that by submitting itself to good faith negotiations with the Geneva Township Highway Commission that UP is justified in relying on the Geneva Township Highway Commission's representations that the ultimate affect of such reliance has been to delay the process before the Illinois Commerce Commission for almost two (2) years. Attached hereto as Exhibits "G" and "E" respectively, are the drafts of the proposed Settlement Agreement and Release as provided by the Geneva Township Highway Commissioner to the UP. The final terms of which, including compensation and delegation of work items having been agreed to by the parties.

For the reasons outlined above and those presented at the hearings in this matter, it is clear to the UP that the justification for closing Old Kirk Road Crossing is not only justified and warranted by the evidence but is quite frankly the right thing to do in view of the substantial growth which is proposed for this area by the testimony presented on behalf of the governmental entities in this matter. To leave a Crossing such as the Old Kirk Road Crossing in place in light of the expected substantial development and roadway activities that are planned for this area cannot be justified. It is clear that if this Crossing did not exist, said plans for future growth would not include the establishment of an at-grade crossing on Old Kirk Road as it is currently configured. Rather, Old Kirk Road would be shifted to the east to accommodate a traffic light at the intersection with Route 38/Roosevelt Road. The intersection of Old Kirk Road and route 38/Roosevelt road by the evidence presented by the Respondents clearly shows that the such intersection is included as part of the reconfiguration of the scheduled revisions to the intersection of Kirk Road and Route 38/Roosevelt Road. The UP has done nothing to create the Respondent's alleged problems at the intersection of Route 38/Roosevelt Road and Old Kirk Road with regard to the right and left turning rights. Those problems exist whether or not there is the Crossing. However, to demand retention of the Crossing to avoid addressing and curing the turning issue for trucks at Route 38/Roosevelt Road is an unconscionable burden to place on the UP. Why should the UP continue to maintain and suffer the risk and exposure of a clearly redundant crossing when a massive IDOT construction project is planned for the vicinity which at minimum should address compatibility of existing road intersections. For IDOT to suggest making Old Kirk Road a right turn only intersection at Route 38/Roosevelt Road as alleged by Geneva Township destroys the access expected by the residents

for over 50 years, directs "substantial" semi-tractor trailer traffic over non-qualified residential streets in Geneva Township over an at-grade railroad crossing which has over 100 high speed trains daily which is located only 600 feet from a highway bridge over the UP built and designed by IDOT under a plan to eliminate such at-grade travel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mack H. Shumate, Jr.", with a stylized flourish at the end.

Mack H. Shumate, Jr.  
Senior General Attorney

Mack H. Shumate, Jr.  
Union Pacific Railroad Company  
101 North Wacker Drive  
Suite 1920  
Chicago, IL 60606  
312/777-2055

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

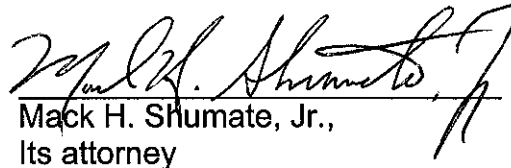
UNION PACIFIC RAILROAD COMPANY	)	
	)	
Petitioner,	)	
	)	
vs.	)	T01-0040
	)	
TOWNSHIP OF GENEVA, STATE OF	)	
ILLINOIS, and ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondents.	)	

Petition for an order of the Illinois Commerce Commission  
For the closure of Old Kirk Road, public grade crossing  
DOT #174 986H at milepost 33.75 on the Geneva  
Subdivision, City of Geneva, Geneva Township, Kane  
County, Illinois.

NOTICE OF FILING

TO: David Lazarides  
Director of Processing  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62794-9280

PLEASE TAKE NOTICE that I have filed this 24<sup>th</sup> day of June, 2002, Union Pacific Railroad Company's Brief with the Illinois Commerce Commission regarding the captioned matter.

  
Mack H. Shumate, Jr.,  
Its attorney

Mack H. Shumate, Jr.  
Union Pacific Railroad Company  
101 North Wacker Drive, Suite 1920  
Chicago, Illinois 60602  
312/777-2055

PROOF OF SERVICE

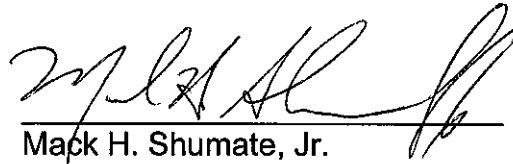
The undersigned attorney hereby certifies that a copy of the foregoing instrument was served by depositing same in the United States Post Office Mailbox at 101 North Wacker Drive, Chicago, IL 60606 on June 23, 2003, in an envelope with postage fully prepaid to and in the following manner addressed:

Mr. James C. Slifer  
Director Division of Highways  
Illinois Department of Transportation  
2300 Dirksen Parkway  
Springfield, IL 62764

Mr. John Carlson  
Geneva Township Road Commission  
Geneva Township  
2202 Gray Lane  
Geneva, IL 60134

Mr. Robert Berry  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62794-9280

Mary E. Dickson  
Bond, Mork & Dickson, P.C.  
203 East Liberty Drive  
Wheaton, IL 60187

  
Mack H. Shumate, Jr.



U.S. Department  
of TransportationFederal Railroad  
Administration

## FAX TRANSMITTAL

# of pages =

To <i>Mr. Robert Berry</i>	From
Dept./Agency <i>U. Pacific</i>	Phone #
Fax #	Fax #

NSN 7540-01-317-7968

5099-101

GENERAL SERVICES ADMINISTRATION

JO Severin St. S.W.  
Washington D.C. 20580111 North Canal Street  
Suite 655  
Chicago, Illinois 60606

June 13, 2001

RE: T01-0040

Mr. Robert Berry  
Railroad Safety Specialist  
Illinois Commerce Commission  
527 East Capitol Av  
Springfield, IL 62701

Subject: Docket # T01-0040 Old Kirk Road Closure

Dear Mr. Berry:

The Federal Railroad Administration's (FRA) primary mission is ensuring railroad safety. To accomplish its mission, FRA encourages cooperative efforts to advance safety throughout America's rail system, including the prevention of highway-rail crossing collisions-one of two of the leading causes of rail related deaths and injuries. Our ongoing effort to enhance safety at highway-rail crossings takes on several different approaches. One of those approaches, deals specifically with grade crossing consolidations. During the 1991 National Conference on Highway-Rail Safety, we were given the goal of reducing the number of public and private at grade crossings by 25 percent by the year 2001.

One action that impedes our efforts of consolidating grade crossings is the failure to close grade crossings when the construction of a grade separation nearby has been established. A grade separation is a structure whereby the highway user can travel over or under the railroad-right-of-way safely without risk of collision with a train.

Kirk Road in Geneva Township was grade separated in 1971 and since its construction the Old Kirk Road grade crossing DOT # 174986H milepost 33.75 has remained opened.

The FRA supports the consolidation of and/or closing of redundant and unnecessary highway-rail grade crossings. This is a key element in the United States Department of Transportation Action Plan to improve grade crossing safety. FRA is encouraging States, political subdivisions and railroads to reduce the 257,716 public and private grade crossings. To assist in this process, crossing diagnostic teams are organized by

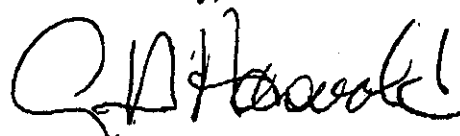
State officials. Members include representatives from operating railroads and officials from Federal agencies. Local governments are encouraged to participate.

I hope you will concur with this office's recommendation to close this crossing. This change will provide the residents in the community the quality of life they so deserve and desire.

Thank you for taking the time to give consideration to this important issue. FRA recommends that consideration by the Illinois Commerce Commission be given to the closure Old Kirk Road. The FRA remains firm and steadfast in our commitment to a safe rail transportation system for passengers, railroad employees and the public

Nearly every 100 minutes someone in America is hit by a train. Most vehicle train collisions occur within 25 miles of the motorist's home. Let's keep Geneva Township safe, by eliminating a place to cross railroad tracks at grade.

Sincerely,



Laurence Hasvold  
Regional Administrator

CC: Brian M. Maher  
33W568 Eastlane Road  
West Chicago, IL 60185

**WHEN APPROACHING ALL RAILROAD TRACKS – ALWAYS EXPECT A TRAIN !**



DuPage Railroad  
Safety Council



March 29, 2003

Thomas A. Zapler  
Special Representative  
Union Pacific Railroad Company  
Governmental Affairs - Central Region  
101 N. Wacker Drive  
Suite 1910  
Chicago, Illinois 60606

Dear Mr. Zapler:

The DuPage Railroad Safety Council will soon begin its tenth year as a private, non-profit organization whose mission is to prevent deaths and injuries at railroad crossings and along railways. We have learned a great deal about railroad safety issues. Our teachers have been politicians, law enforcement officers, generous citizens, railroad experts and families who have lost loved ones at railroad crossings or along the railways. Many of these "teachers" have become members of our organization.

It has come to our attention that you have been attempting to gain the support of Geneva Township for the permanent closure of the Old Kirk Road crossing. We understand that it is redundant due to the fact that the Kirk Road grade separation is just a few hundred feet to the West. We further understand that the old Kirk Road crossing (at-grade-level) is a significant hazard to the community since people attending Kane County Cougar games and commercial vehicles use it as a high-speed shortcut through the nearby residential neighborhoods.

With the above thoughts in mind, the DuPage Railroad Safety Council unanimously passed a motion to support closure of the Old Kirk Road crossing. Further, the Council requested that I write a letter stating our position and stressing the redundant nature of that crossing.

Please help us attain our mission, by using whatever powers of persuasion you possess. That crossing needs to be closed to help prevent deaths or major disability in that community.

Sincerely,

Lanny F. Wilson, M.D.  
Chairman

APR - 8 2003



SEP 30 1999

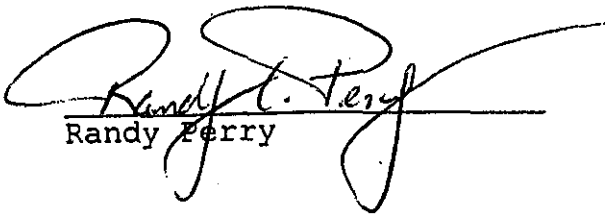
LAW DEPARTMENT  
UNION PACIFIC RR CO.

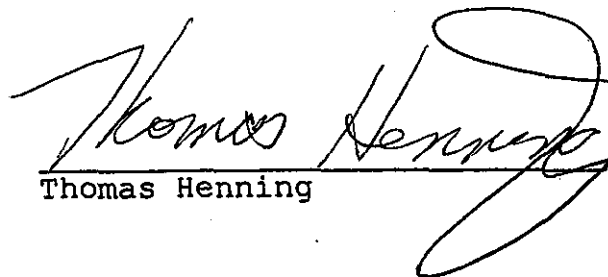
TO: Mack Shumate  
FROM: Chicago/Commuter Grade Crossing Steering Committee  
RE: Old Kirk Road

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One responsibility of the Chicago/Commuter Grade Crossing Steering Committee is to reduce the number of grade crossings in our Service Units. We have been advised that you have been given the material necessary to petition the ICC for the closure of Old Kirk Road. ✓

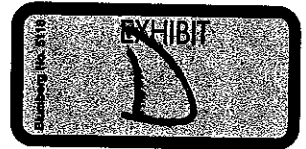
As the Co-Chairmen of the Grade Crossing Steering Committee, we are requesting that you petition the ICC as soon as possible seeking authority to close Old Kirk Road.

  
Randy Perry

  
Thomas Henning

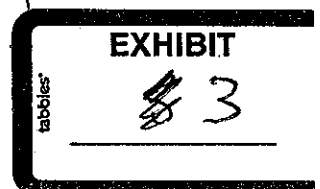
cc: Ron Cuchna

(TAZ92099.008)



## UP Calls

- 1-21 Mr. Dickson - opposes closing
- 1-22 - Gladys Mueller - favors track open  
(safety)
- \* 1-23 Bernie Naughton  
favors closing because of traffic
- \* 1-24 - Deborah Folino support closing
- 1-27 Howard Bullman 208-5800  
oppose closing
- 1-27 Terri Lynn Jones  
Juilli Macias  
Rita Ellison  
Marcus Weddle  
woman } Employees of  
Material Handling  
oppose closing  
Aubrey - 3 or 4 calls
- 1-27 Debbie Magrone  
CLC Lubricants employee  
opposed to closing
- 1-27 Chuck Weddle - owner of Material Handling  
208-1802 opposed to closing
- 1-27 Bill Depaul  
Reed Rd. business (40 people)  
235-3277 owner  
opposed to closing



1-27 Pat O'Brien → CLC Lubricants  
232 - 7900

1-27 Roger Jones  
Material Handling - employee  
opposed to closing

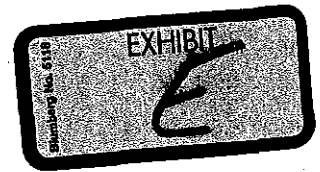
1-27 John Glenn  
Motor Equip. Serv.  
33W 740 Reed Rd.  
Geneva  
Mailing: P.O. Box 373, West Chicago  
60186

right in - right out a huge prob.

1-27 Joan Harrison  
CLC Lubricants employee  
oppose closing

1-27 George Arnone  
1520 Kirkwood Dr.  
works in vicinity of Old Kirk  
opposed

1-27 Glen Gales  
works off old Kirk - opposes



STATE OF ILLINOIS

COUNTY OF KANE

**RESOLUTION NO. 03 - 168**

**SUPPORTING THE GRADE CROSSING AT  
OLD KIRK ROAD IN GENEVA**

WHEREAS, the Kane County Division of Transportation and the Illinois Department of Transportation are currently pursuing a major intersection improvement at Kirk Road and Illinois Route 38; and

WHEREAS, the County and State are analyzing improvements, changes to access and alignment of Old Kirk Road as part of the major intersection improvement at Kirk Road and Illinois Route 38; and

WHEREAS, the design for the major intersection improvement is not yet complete; and

WHEREAS, Old Kirk Road also provides an effective alternate route for Kirk Road in the event of emergencies or incidents on the Kirk Road bridge over the Union Pacific Railroad; and

WHEREAS, the Kane County Forest Preserve District, in the name of all of the Citizens of Kane County, is the owner of a certain property in Kane County known as the Kane County Events Center; and

WHEREAS, this property is located in Geneva Township and is the home of the Kane County Cougars; and

WHEREAS, this property is visited by over 500,000 residents of Northern Illinois each year who attend Cougar baseball games and other activities at the Kane County Events Center; and

WHEREAS, the Union Pacific Railroad desires to close a grade crossing that will limit access via Old Kirk Road to the Kane County Events Center; and

WHEREAS, the proposed grade crossing closure must be considered in the context of the area transportation network, safety of the motoring public and the quality of life for residents of Northern Illinois.

NOW, THEREFORE, BE IT RESOLVED that the Kane County Board opposes the closing of the grade crossing at Old Kirk Road by the Union Pacific Railroad, in the name of the residents of Northern Illinois that use this road to access the Kane County Events Center, or as an alternate route to Kirk Road, until an alternative access and circulation plan can be developed in coordination with the major intersection improvement at Kirk Road and Illinois Route 38.

BE IT FURTHER RESOLVED that the State of Illinois be notified of this resolution and that the State of Illinois take the necessary steps to protect this valuable grade crossing at Old Kirk Road.


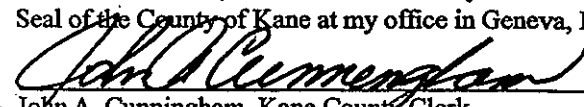
Passed by the Kane County Board on May 13, 2003.

  
Clerk, County Board  
Kane County, Illinois

  
Chairman, County Board  
Kane County, Illinois

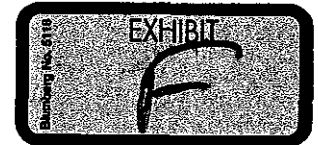
Vote:  
Yes 25  
No 0

5OLDKRK.4LH

STATE OF ILLINOIS COUNTY OF KANE	DATE <u>MAY 14 2003</u>
I, John A. Cunningham, Kane County Clerk and Keeper of the Records in Kane County, Illinois do hereby certify that the attached is a true and correct copy of the original record on file.	
	In witness whereof, I have hereunto set my hand and affixed the Seal of the County of Kane at my office in Geneva, Illinois.  John A. Cunningham, Kane County Clerk



STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF K A N E )



**RESOLUTION NO. FP-R-02-03-1426**

**A RESOLUTION SUPPORTING THE GRADE CROSSING AT  
OLD KIRK ROAD IN GENEVA**

WHEREAS, the Kane County Forest Preserve District, in the name of all of the Citizens of Kane County, is the owner of a certain property in Kane County known as the Kane County Events Center; and

WHEREAS, this property is located in Geneva Township and is the home of the Kane County Cougars; and

WHEREAS, this property is visited by over 500,000 residents of Northern Illinois each year who attend Cougar baseball games and other activities at the Kane County Events Center; and

WHEREAS, the Union Pacific Railroad desires to close a grade crossing that will limit access thru Old Kirk Road to the Kane County Events Center.

NOW, THEREFORE, BE IT RESOLVED that the Kane County Forest Preserve Commission opposes the closing of the grade crossing at Old Kirk Road by the Union Pacific Railroad, in the name of the residents of Northern Illinois that use this road to access the Kane County Events Center, until an alternative access can be developed.

BE IT FURTHER RESOLVED that the State of Illinois be notified of this resolution, and that the State of Illinois take the necessary steps to protect this valuable grade crossing at Old Kirk Road.

APPROVED AND PASSED this 11th day of February 2003.

APPROVED:

A handwritten signature in black ink, appearing to be "John A. Smith", written over a horizontal line.

President, Board of Commissioners  
Forest Preserve District of Kane County

ATTEST:

A handwritten signature in black ink, appearing to be "John A. Smith", written over a horizontal line.

Secretary, Board of Commissioners  
Forest Preserve District of Kane County





Building G • 719 Batavia Avenue • Geneva • Illinois 60134

**JOHN J. HOSCHEIT**  
President

**JON J. DUERR**  
Executive Director

630-232-5980  
Fax: 630-232-5924  
forestpreserve@co.kane.il.us


STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF K A N E )

CERTIFICATE OF THE ASSISTANT SECRETARY

I, ROBERT J. QUINLAN, DO HEREBY CERTIFY that I am the Assistant Secretary of the Forest Preserve District of the County of Kane, Illinois, and that as such Assistant Secretary I am the keeper and custodian of the files and records of said Forest Preserve District of the County of Kane and the seal thereof.

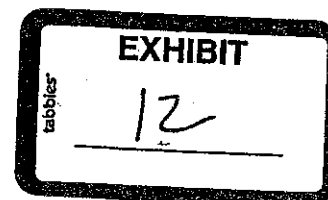
I DO FURTHER CERTIFY that the attached is a full, true and correct copy of Resolution No. FP-R-02-03-1426 Resolution Supporting The Grade Crossing at Old Kirk Road in Geneva.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of the Forest Preserve District of said County and State aforesaid this 29th. day of April, 2003.

  
ROBERT J. QUINLAN,  
ASSISTANT SECRETARY



*To preserve and restore the Nature of Kane County*





**BOND, DICKSON & ASSOCIATES, P.C.**  
ATTORNEYS AT LAW

PATRICK K. BOND  
MARY E. DICKSON

-----  
TIMOTHY M. KENNEDY

FAX COVER SHEET

Date: December 2, 2002

To: Mack Schumate

FAX: 312/777-2065

From: Mary E. Dickson

Re: Our File No. 01-585

Number of pages in this transmission (including cover sheet): 9

Comments: Mack: At long last, attached is a settlement proposal for UP review. Please call me so that we can discuss this document, as well as our December 10 hearing date. Hope you had a great holiday. Mary Dickson

Copy being sent by regular mail ☐ yes ☒ no

**NOTICE TO OPERATOR:**

*IF YOU DID NOT RECEIVE ALL OF THE PAGES OR THE DOCUMENT IS ILLEGIBLE,  
CONTACT US IMMEDIATELY. THANK YOU.*

**NOTE TO ALL RECIPIENTS:**

The information contained in this facsimile message is attorney-privileged and confidential information intended for the use of the individual or entity to whom it is directed. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this transmission in error, please immediately notify us by telephone, and return the original message to us at the above address by U.S. Mail. Cost incurred will be reimbursed.

203 EAST LIBERTY DRIVE, WHEATON, ILLINOIS 60187  
(630) 681-1000 Fax: (630) 681-1020

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

UNION PACIFIC RAILROAD COMPANY)

Petitioner,

vs.

TO1-0040

TOWNSHIP OF GENEVA, STATE OF ILLINOIS )  
and the ILLINOIS DEPARTMENT OF )  
TRANSPORTATION, )

Respondents. )

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of February \_\_, 2002. The parties to this Agreement are the Union Pacific Railroad Company ("UP"), and the Highway Commissioner of the Township of Geneva ("Geneva").

**WHEREAS**, the UP operates multiple lines of track through Geneva, including, but not limited to track which crosses Old Kirk Road at grade, at milepost 33.75 (D.O.T. No. 174 986H) ("Subject Crossing"); and

**WHEREAS**, Old Kirk Road is located within Geneva, and is maintained and operated by the Geneva Township Highway Commissioner; and

**WHEREAS**, the UP believes that public safety would benefit from the closure of the Subject Crossing at Old Kirk Road, this area already being served by an overhead bridge crossing at Kirk Road, some 600' to the west of the Subject Crossing, which was established as an overpass project on April 22, 1964 by order of the Illinois Commerce Commission, No. 50293 as supplemented by X-Resolution approved October 9, 1996 by the Railroad Safety Program Administrator of the Commission; and

**WHEREAS**, for this purpose, the UP filed the instant matter to close the Subject Crossing;  
and

**WHEREAS**, while Geneva has objected to the closing of the Subject Crossing, it also recognizes that there is a benefit to be accrued to the residents of Geneva through amicable settlement of this matter; and

**WHEREAS**, the parties wish to enter into a settlement agreement to resolve any claims or disputes that might otherwise arise between them regarding the closing of the Subject Crossing; and

**WHEREAS**, the parties have been fully advised by their respective attorneys with respect to the terms of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals, which by this reference are incorporated into and made a part of this Agreement, the mutual promises and covenants set forth below to be kept and performed by the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Geneva hereby agrees to the closing of the Subject Crossing.
2. In exchange for Geneva's agreement to the closing of the Subject Crossing, the UP will commit the sum of Seventy Four Thousand, Two Hundred Twenty Eight and 05/100 Dollars to Geneva to be used for the following purposes:
  - a. removal of the crossing and roadway surface, and all signalization existing on UP property at the Subject Crossing;
  - b. construction of a T-type turn-around on the south side of the Subject Crossing;
  - c. construction of a suitable turn around on the north side of the Subject

Crossing;

- d. construction, grading and landscaping a suitable berm on the south side of the existing Subject Crossing, including the cost of the berm material;
- e. provision of all surveying, engineering and engineering drawings needed for the work as set forth hereinabove; and

All as is set forth more fully in Exhibit "A" attached hereto and incorporated herein by reference.

- 3. All work to be undertaken shall be with the advice and consent of Geneva, which consent shall not be unreasonably withheld.
- 4. Any sums remaining after the work contemplated hereunder shall be complete shall be forwarded to Geneva, attn: Geneva Township Highway Commissioner, for use on township road projects to further benefit the residents of the subject area, or as the Township Highway Commissioner then sees fit.
- 5. Neither party shall assign, in whole or in part, this Agreement or any of their respective rights or obligations under this Agreement, without the prior written approval of the other party.
- 6. The parties agree that damages and any other remedies available at law would be inadequate to redress or remedy any loss or damage suffered by the parties upon any breach of the terms of this Agreement, and the parties therefore agree that the parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement. The parties hereto waive the requirement of proof of irreparable harm as a prerequisite to the issuance of preliminary or permanent injunctive

relief or specific performance relating to violations of this Agreement, but do not waive the moving party's obligation to demonstrate the existence of a breach of this Agreement by competent evidence and legal argument, and do not waive the right to money damages. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

7. The provisions of this Agreement shall be interpreted when possible to sustain their validity, legality, and enforceability as a whole. In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Agreement, shall in any way be affected thereby and the parties shall negotiate, in good faith, amendments to this Agreement acceptable to the parties to effectuate and fulfill the spirit and intent of the parties in adopting this Agreement within the limits of validity, legality, and enforceability. In the event no such revision is agreed upon, or any such invalidity, illegality or unenforceability materially adversely affects the rights and obligations of either party under this Agreement, any party shall have the right to terminate this Agreement, as the case may be, by giving written notice of such termination to the non-terminating party(ies) within sixty (60) days of receipt of notice of such invalidity, illegality, or unenforceability, in which event this Agreement shall be of no force or effect.

8. This Agreement shall be binding upon, and inure to the benefit, of, the parties and their permitted successors, assigns and representatives.

9. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any action or proceeding in any way arising out of this Agreement shall be litigated only in the Sixteenth Judicial Circuit Court, Kane County, Illinois, and the parties irrevocably consent and submit to the jurisdiction of that court.

10. Any written notice given hereunder shall be sent by either of fax transmission or courier as follows:

If to the UP:

With a copy to: Mack H. Schumate, Jr.,  
101 N. Wacker Dr. Suite 1920  
Chicago, IL 60602  
Facsimile: (312) 777-2065

If to the Township of Geneva: Geneva Township  
2202 Gary Lane  
Geneva, IL 60134  
Attn: John Carlson,  
Highway Commissioner  
Fax: 630/232-3606

with a copy to: Mary E. Dickson  
BOND, DICKSON & ASSOCIATES, P.C.  
203 East Liberty Drive  
Wheaton, Illinois 60187  
Fax: (630) 681-1020

Notice is to be deemed given when received as indicated by receipt or record of fax transmission delivery.

11. This Agreement constitutes the entire agreement of the parties with respect to the settlement and compromise of the claims or disputes that might otherwise arise between them with



regard to the instant matter and there are no other understandings or agreements with respect thereto.

This Agreement may not be modified, interpreted, amended, waived, or revoked orally, but only by a writing, duly approved and signed by all parties or their attorneys.

12. This Agreement may be executed in identical original counterparts, with each counterpart constituting the entire Agreement.

13. Upon execution of this Agreement, an agreed order consonant with the terms of this Agreement shall be submitted for approval by the Illinois Commerce Commission.

**IN WITNESS THEREOF**, the parties have executed this Settlement Agreement and Release by their duly authorized officers effective as of the date first set forth above.

Union Pacific Railroad

Township of Geneva

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: John Carlson

Title: \_\_\_\_\_

Title: Highway Commissioner

# OLD KIRK ROAD R. R. CROSSING CLOSURE PRELIMINARY COST ESTIMATE

CLIENT: Geneva Township  
2202 Gary Lane  
Geneva, Illinois

DATE: 11/14/02  
STEVE RICHARDSON

ITEM NO.	ITEM	ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	EARTH EXCAVATION	200.0	C.Y.	\$18.00	\$3,600.00
2	REMOVE EXISTING PIPE CULVERT (UPRR ROW)	140.0	L.F.	\$28.00	\$3,920.00
3	24" RCP PIPE W/2 F.E.S.	120.0	L.F.	\$42.00	\$5,040.00
4	18" CMP PIPE W/1 F.E.S.	10.0	L.F.	\$40.00	\$400.00
5	TRENCH BACKFILL	17.0	C.Y.	\$17.00	\$289.00
6	BITUMINOUS SURFACE REMOVAL (TOWNSHIP ROW)	380.0	S.Y.	\$9.00	\$3,420.00
7	BITUMINOUS SURFACE REMOVAL (UPRR ROW)	200.0	S.Y.	\$12.00	\$2,400.00
8	AGGREGATE BASE COURSE, 10"	540.0	S.Y.	\$14.00	\$7,560.00
9	BITUMINOUS PRIME COAT	216.0	GAL.	\$1.50	\$324.00
10	2" BITUMINOUS BINDER COURSE	85.0	TON	\$58.00	\$3,770.00
11	1 1/2" BITUMINOUS SURFACE COURSE	50.0	TON	\$61.00	\$3,050.00
12	EMBANKMENT	110.0	C.Y.	\$15.00	\$1,650.00
13	TOPSOIL AND SOD	260.0	S.Y.	\$7.50	\$1,950.00
14	FENCE	90.0	L.F.	\$19.00	\$1,710.00
15	BARRICADES FOR TURN-AROUND	6.0	EACH	\$800.00	\$4,800.00
16	CONSTRUCTION STAKEOUT	1.0	L.S.	\$4,000.00	\$4,000.00
17	EROSION CONTROL	1.0	L.S.	\$1,000.00	\$1,000.00
18	TRAFFIC CONTROL	1.0	L.S.	\$500.00	\$500.00
19	EASEMENT COSTS Per Chase	3200.0	S.F.	\$1.07	\$3,424.00
SUBTOTAL					\$52,807.00
15% CONTINGENCY					\$7,921.05
TOTAL					\$60,728.05

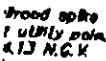
20 Landscape plantings 5,000.00  
21 Engineering and Construction Supervision 8,500.00

TOTAL \$74,228.05

EXHIBIT

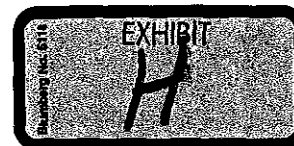
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P - 3



## BOND, MORK &amp; DICKSON, P.C.

ATTORNEYS AT LAW



PATRICK K. BOND  
ROBERT I. MORK  
MARY E. DICKSON

February 20, 2002

VIA FACSIMILE TRANSMISSION ONLY

Mack H. Schumate, Jr.,  
Attorney for Union Pacific Railroad Company,  
101 N. Wacker Dr. Suite 1920  
Chicago, IL 60602

RE: Union Pacific Railroad vs. Township of Geneva  
Case No. T 01-004  
Our File No. 01-585

Dear Mr. Schumate:

Enclosed is a draft copy of the settlement agreement we have discussed for purposes of disposing of the above-referenced matter. Because of my delay in forwarding this document to you, I propose that we confer with Ms. Tate tomorrow and have the matter continued once again until you have had the opportunity to review this settlement document.

You will note that the agreement contemplates payment of \$100,000.00 at least \$50,000.00 of which is earmarked for the construction of a right in/right out access onto Illinois Route 38 and Old Kirk Road. As you know, closing the crossing will necessarily require that the commercial traffic north of the crossing enter and exit Old Kirk using only Illinois Route 38. Accordingly, as part of the agreement for settlement of this case, my client requires that the access to Illinois Route 38 be eased by construction of the right in right out access only. Alternatively, because this construction is already being contemplated by Kane County for construction in the year 2004, instead of undertaking the payment for this now, the UP could agree to hold off closing Old Kirk Road until the year 2004, when this cost would be born by the County. The Agreement would then require restructuring to state that Old Kirk will not close until year 2004. However, if the County did not construct the right in, right out at the time of the crossing closing, the UP would be required to do so to close the crossing.

Please call me to discuss this matter further.

Very truly yours,

BOND, MORK &amp; DICKSON, P.C.

  
Mary E. Dickson

MED/bms  
Enclosure

203 EAST LIBERTY DRIVE, WHEATON, ILLINOIS 60187  
(630) 681-1000 FAX: (630) 681-1020

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

UNION PACIFIC RAILROAD COMPANY	)	
	)	
Petitioner,	)	
	)	
vs.	)	TO1-0040
	)	
TOWNSHIP OF GENEVA, STATE OF ILLINOIS	)	
and the ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondents.	)	

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is made as of February \_\_, 2002. The parties to this Agreement are the Union Pacific Railroad Company ("UP"), the Township of Geneva ("Geneva Township") and the Illinois Department of Transportation ("IDOT").

**WHEREAS**, the UP operates multiple lines of track through Geneva, including, but not limited to track which crosses Old Kirk Road at grade, at milepost 33.75 (D.O.T. No. 174 986H) ("Subject Crossing"); and

**WHEREAS**, Old Kirk Road is located within Geneva, and is maintained and operated by the Geneva Township Highway Commissioner; and

**WHEREAS**, the UP believes that public safety would benefit from the closure of the Subject Crossing at Old Kirk Road, this area already being served by an overhead bridge crossing at Kirk Road, some 600' to the west of the Subject Crossing, which was established as an overpass project on April 22, 1964 by order of the Illinois Commerce Commission, No. 50293 as supplemented by X-Resolution approved October 9, 1996 by the Railroad Safety Program Administrator of the Commission; and

**WHEREAS**, for this purpose, the UP filed the instant matter to close the Subject Crossing;  
and

**WHEREAS**, while Geneva Township has objected to the closing of the Subject Crossing,  
it also recognizes that the benefit to be accrued to the residents of Geneva Township through  
amicable settlement of this matter; and

**WHEREAS**, the parties wish to enter into a settlement to resolve any claims or disputes that  
might otherwise arise between them regarding the closing of the Subject Crossing; and

**WHEREAS**, the parties have been fully advised by their respective attorneys with respect  
to the terms of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals, which by this reference are  
incorporated into and made a part of this Agreement, the mutual promises and covenants set forth  
below to be kept and performed by the parties, and other good and valuable consideration, the receipt  
and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Geneva Township Highway Commissioner hereby agrees to the closing of the Subject Crossing.
2. In exchange for Geneva Township Highway Commissioner's agreement to the closing of the Subject Crossing, the UP agrees:
  - a. that it will not allow any trains to blow whistles or horns at the intersection of Third Street and the Union Pacific rail tracks in Geneva, Illinois;
  - c. that it will commit the sum of One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) to the Geneva Township Highway Commissioner to be used for, but not limited to, the following purposes:
    - i. land acquisition for and construction of a T-type turn-around pursuant

- to Geneva Fire Department specifications on the south side of the Subject Crossing;
- ii. land acquisition for and construction of a T-type turn-around pursuant to Geneva Fire Department specifications on the north side of the Subject Crossing;
  - iii. construction, grading and landscaping a berm on the north and on the south side of the existing Subject Crossing, including the cost of design, landscaping and berm material;
  - iv. construction of a water main connection on the south side of the Subject Crossing, by connecting to the hydrant located on the north side of the Subject Crossing (including any boring needed), or establishing a new water main connection on the south side of the Subject Crossing;
  - v. Land acquisition for and construction of a right in/right out access only, at Illinois Route 38 and Old Kirk Road, said access to include a dedicated right turn lane onto Old Kirk Road
  - vi. provision of all surveying, engineering and engineering drawings, needed for the work as set forth hereinabove; and
  - vii. provision of any permanent easement and/or license (at no cost) which may be needed for construction of the water connection contemplated hereinabove.

3. All work to be undertaken shall be with the advice and consent, and subject to the approval of, the Kane County Engineer.

4. Any sums remaining after the work contemplated hereunder shall be complete shall be forwarded to Geneva Township, attn: Geneva Township Highway Commissioner, for use on township road projects to further benefit the residents of the subject area, or as the Township Highway Commissioner then sees fit.

5. Neither party shall assign, in whole or in part, this Agreement or any of their respective rights or obligations under this Agreement, without the prior written approval of the other party.

6. The parties agree that damages and any other remedies available at law would be inadequate to redress or remedy any loss or damage suffered by the parties upon any breach of the terms of this Agreement, and the parties therefore agree that the parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement. The parties hereto waive the requirement of proof of irreparable harm as a prerequisite to the issuance of preliminary or permanent injunctive relief or specific performance relating to violations of this Agreement, but do not waive the moving party's obligation to demonstrate the existence of a breach of this Agreement by competent evidence and legal argument, and do not waive the right to money damages. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

7. The provisions of this Agreement shall be interpreted when possible to sustain their validity, legality, and enforceability as a whole. In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part,



neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Agreement, shall in any way be affected thereby and the parties shall negotiate, in good faith, amendments to this Agreement acceptable to the parties to effectuate and fulfill the spirit and intent of the parties in adopting this Agreement within the limits of validity, legality, and enforceability. In the event no such revision is agreed upon, or any such invalidity, illegality or unenforceability materially adversely affects the rights and obligations of either party under this Agreement, any party shall have the right to terminate this Agreement, as the case may be, by giving written notice of such termination to the non-terminating party(ies) within sixty (60) days of receipt of notice of such invalidity, illegality, or unenforceability, in which event this Agreement shall be of no force or effect.

8. This Agreement shall be binding upon, and inure to the benefit, of, the parties and their permitted successors, assigns and representatives.

9. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any action or proceeding in any way arising out of this Agreement shall be litigated only in the Sixteenth Judicial Circuit Court, Kane County, Illinois, and the parties irrevocably consent and submit to the jurisdiction of that court.

10. Any written notice given hereunder shall be sent by either of fax transmission or courier as follows:

If to the UP:

With a copy to:

Mack H. Schumate, Jr.,  
101 N. Wacker Dr. Suite 1920  
Chicago, IL 60602  
Facsimile: (312) 777-2065

If to Geneva Township: Geneva Township  
2202 Gary Lane  
Geneva, IL 60134  
Attn: John Carlson,  
Highway Commissioner  
Fax: 630/232-3606

with a copy to: Mary E. Dickson  
BOND, MORK AND DICKSON, P.C.  
203 East Liberty Drive  
Wheaton, Illinois 60187  
Fax: (630) 681-1020

If to Illinois Department of Transportation:

with a copy to:

Notice shall be deemed given when received as indicated by receipt or record of fax transmission delivery.

11. This Agreement constitutes the entire agreement of the parties with respect to the settlement and compromise of the claims or disputes that might otherwise arise between them with regard to the instant matter and there are no other understandings or agreements with respect thereto. This Agreement may not be modified, interpreted, amended, waived, or revoked orally, but only by a writing, duly approved and signed by all parties or their attorneys.

12. This Agreement may be executed in identical original counterparts, with each counterpart constituting the entire Agreement.

13. Upon execution of this Agreement, an agreed order consonant with the terms of this Agreement shall be submitted for approval by the Illinois Commerce Commission.

IN WITNESS THEREOF, the parties have executed this Settlement Agreement and Release by their duly authorized officers effective as of the date first set forth above.

Union Pacific Railroad

Township of Geneva

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: John Carlson

Title: \_\_\_\_\_

Title: Highway Commissioner

Illinois Department of Transportation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_